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Colorado General Assembly

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MEMORANDUM

TO: Jason Legg and Scott Cadiz

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: April 10, 2017

SUBJECT: Proposed initiative measure #32, concerning tax revenue for voter per diem

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To increase electoral participation by offsetting the expenses a voter incurs in exercising their right to vote while decreasing the influence of the wealthy on elections;

2. To impose a tax of one-half percent on Colorado taxable income in excess of \$405,000, to be adjusted for inflation, of every individual, estate, and trust; and
3. To use the revenue generated by said taxes to create a tax credit available to any individual who casts a ballot in a Colorado general election.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. Under section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.
 - a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
 - b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
 - c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.
4. With respect to the language in the declaration portion of the proposed initiative:
 - a. What are the expenses the average voter incurs in exercising his or her right to vote?
 - b. How will giving each voter who casts a ballot a relatively modest per diem payment increase electoral participation and the representativeness of our government?

5. With respect to subsection (2)(A) of the proposed initiative:
 - a. Subsection (2)(A) of the proposed initiative says that the tax on income in excess of \$405,000 is to be adjusted for inflation. When does the inflation adjustment start?
 - b. Is the tax that is imposed on \$405,000 in the 2019 income tax year to be adjusted for inflation in future tax years or is the amount of the tax to be adjusted for inflation upon passage of the proposed initiative in 2018?
 - c. How did the proponents come up with the \$405,000 figure as the threshold for payment of the additional tax?
 - d. What is the proponents' rationale for imposing the entire cost of a program intended to spur voter participation across society on taxpayers making over \$405,000? If the goal of expanding voter participation is a social good that benefits the entire society, why are the costs of carrying out this program concentrated on the top 1% of taxpayers?
6. With respect to subsection (4) of the proposed initiative and throughout the text of the measure more generally, what do the proponents mean by a "per diem". Per diem generally means a daily allowance, usually provided for payment to a person of living expenses while he or she is traveling or performing a job away from home. As such, why do the proponents call this benefit a "per diem"? For purposes of the proposed initiative, is a per diem the functional equivalent of a tax credit or tax refund? Or do the proponents intend that the voter be given a per diem and some other form of tax-derived public benefit? Would the proponents consider clarifying the text of the proposed initiative on this point?
7. With respect to subsection (4) of the proposed initiative, please explain why the General Assembly is required to appropriate revenues for the per diem annually when the per diem is only credited, refunded, and able to be claimed in the year of a general election? Is this because it takes two years of tax revenues to fund the per diem to be given out during the general election year?
8. How is the per diem treated in the case of a voter who casts a ballot but doesn't owe any income tax to the state?
9. With respect to subsection (5) of the proposed initiative:
 - a. What do you mean by the "eligible number of voters in the general election year"? Is this the number of eligible electors in the state as of the general election or is some other meaning intended?

- b. Please explain how the amount of the per diem is calculated? In particular, what is meant by the phrase "three times the state minimum wage, or twenty seven dollars"?
- 10. With respect to subsection (7) of the proposed initiative, how is the per diem to be verified? As of now, the election records verify whether a particular individual voted, but no one is required to prove they voted to claim any form of public benefit. Is there reason to be concerned that this feature of the proposed initiative would compromise the secret ballot or voter privacy?
- 11. Do the proponents have any idea, using the most recent figures available, the amount of per diem that would be paid to a voter?
- 12. How is the per diem to be claimed by an eligible voter? How will a voter eligible for the per diem receive the payment?
- 13. Based upon the text of the declaration of the proposed initiative, it appears the per diem is intended as an incentive to get more people to cast a ballot in general elections. If so, do the proponents have any empirical data that would demonstrate by how much turnout in general elections will be increased if the per diem were in effect? Is there any empirical evidence that any expense incurred by voters in exercising the right to vote is a factor in people not voting?
- 14. The term "county clerks" is referenced in subsection (7) of the proposed initiative. As this term is not defined, please consider modifying the reference to "county clerk and recorders."
- 15. What does it mean for residual funds to be "directed" to the general fund?
- 16. Section 20 (8)(a) of article X of the Colorado constitution (TABOR) states that "[a]ny income tax law change after July 1, 1992 shall also require all taxable net income to be taxed at one rate...with no added tax or surcharge." How is the proposed measure to be reconciled with this provision of TABOR or do proponents assume this potential legal conflict would be addressed by the courts? If this is a modification of or an exception to TABOR, does it fit within the single subject of the proposed initiative pursuant to article V, section 1 (5.5) of the Colorado constitution?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the

proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Please consider adding " – **declaration.**" to the headnote to indicate to the reader that the section includes a declaration of intent.
2. It is standard drafting practice to avoid using archaic terms. In subsection (1), instead of using "herein", use "in this section".
3. It is standard drafting practice to only break down statutory cites into further paragraphs, subparagraphs, and sub-subparagraphs if there is more than one paragraph, subparagraph, or sub-subparagraph, i.e., rather than having paragraph (a) standalone there would also be paragraphs (b), (c), (d), etc. Please consider removing paragraph (A) and just having a subsection (2).
4. It is standard drafting practice when referencing statutory sections to include the word "section" before the number and not "C.R.S." For example, "section 39-22-104."
5. When referencing another subsection within the same section, it is standard drafting practice to add "of this section" after the subsection reference. For example, "created in subsection (2) *of this section*" (emphasis added).
6. In subsection (2)(A), the paragraph letters should not be shown in small capitals, but instead should be shown in lowercase lettering.
7. Please capitalize the first word in every sentence.